

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DAVID DAVIS,

Plaintiff,

v.

CLARK COUNTY DETENTION CENTER
MEDICAL DEPT.,

Defendant.

Case No. 2:20-cv-01652-RFB-EJY

ORDER

On June 11, 2021, this Court issued an order directing Plaintiff to file a complaint and a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$402 on or before August 9, 2021. (ECF No. 3 at 2). On June 30, 2021, the Court's order was returned as undeliverable. (ECF No. 4). The Court notes the Advisory Letter (ECF No. 2) was not returned. The August 9, 2021 deadline has now expired and Plaintiff has not filed a complaint, an application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,

1 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
2 local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
9 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
14 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air
15 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
16 disposition of cases on their merits—is greatly outweighed by the factors in favor of
17 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
18 the court's order will result in dismissal satisfies the "consideration of alternatives"
19 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
20 F.2d at 1424.

21 The Court's order requiring Plaintiff to file a complaint and an application to
22 proceed *in forma pauperis* or pay the full filing fee on or before August 9, 2021 expressly
23 stated: "IT IS FURTHER ORDERED that if Plaintiff does not file a complaint and a fully
24 complete application to proceed *in forma pauperis* with all three documents or pay the full
25 \$402 filing fee for a civil action on or before August 9, 2021, this case will be subject to
26 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
27 number, when Plaintiff is able to file a complaint and has all three documents needed to
28 file a complete application to proceed *in forma pauperis* or pays the full \$402 filing fee."

1 (ECF No. 3 at 3). Thus, Plaintiff had adequate warning that dismissal would result from
2 noncompliance with the Court's order to file a complaint and an application to proceed *in*
3 *forma pauperis* or pay the full \$402 filing fee on or before August 9, 2021.

4 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
5 based on Plaintiff's failure to file a complaint and an application to proceed *in forma*
6 *pauperis* or pay the full \$402 filing fee in compliance with this Court's order dated August
7 9, 2021. (ECF No. 3).

8 IT IS FURTHER ORDERED that the Plaintiff may move to reopen this case and
9 vacate the judgment by filing a motion for reconsideration of this order. In this motion, the
10 Plaintiff would need to explain that circumstances which led to him not being able to
11 comply with the Court's directions and not updating his address. If the Court finds there
12 is good cause or a reasonable explanation for the failure to comply with the Court's
13 directions, the Court will reopen the case and vacate the judgment.

14 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
15 accordingly and close this case.

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17 DATED: August 18, 2021.



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19 RICHARD F. BOULWARE, II
20 UNITED STATES DISTRICT JUDGE
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